

## Venezuela, the region and the world: steps for a possible way out of the crisis

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# SWP Comment

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## Venezuela, the Region and the World

Steps for a Possible Way Out of the Crisis

*Claudia Zilla*

Since Nicolás Maduro took over as Venezuela's president in 2013, the country's gross domestic product and oil production have fallen by more than 50 percent. Political institutions, on the other hand, have doubled: there are two legislative bodies, two Supreme Courts and, since Juan Guaidó's self-appointment in early 2019, two competing presidents. The international community is divided – many states stand behind the regime, many others behind the opposition. Groups of states are addressing the Venezuela issue in various initiatives, without the participation of the parties in the conflict. The EU and its member states should refrain from any action that could increase the risk of military intervention and bloodshed. Instead, they should exert diplomatic pressure to protect the population from repression, hunger and disease, and to strengthen the opposition. Furthermore, they should support a conflict resolution process that is upheld by national actors and embedded in Latin America, and which has democracy as a long-term goal.

At the beginning of 2019, a new dynamic developed in the Venezuelan conflict over the change of government. After President Nicolás Maduro was re-elected in May 2018 in an early vote that was neither free nor fair, he took up his second mandate on 10 January 2019, for the period up to 2025. However, the opposition National Assembly (NA) withdrew his mandate. As a result, many actors in the international community also refused to recognise Maduro as President of Venezuela. Moreover, the NA elected Juan Guaidó as its chairman. On 23 January, at a major rally in Caracas, he appointed himself interim president of the country. Opposition parties and the population gathered behind the hitherto largely un-

known, charismatic young politician of the *Voluntad Popular* party, which belongs to the Socialist International. He is also backed by numerous states that officially recognise him in his transitional role, that offer humanitarian aid and demand presidential elections. Challenged by these developments, the Maduro government has entrenched its repression and its discourse.

### Increased Repression

Ever since Juan Guaidó declared himself interim president and the populace has repeatedly demonstrated en masse, the Maduro government has been particularly



repressive towards its citizens. According to a report by the Venezuelan human rights organisation Foro Penal, 988 people were arbitrarily arrested in Venezuela between 21 and 31 January 2019. During the same period, 35 people were killed by firearms and at least eight extrajudicial executions are thought to have been carried out. It is notable that this time the victims come predominantly from poorer social strata and that some of them are minors. Many took part in protests for the first time, some were merely nearby. Most arrests (77 percent) took place on 23 January itself, not during the demonstrations but after them, when citizens were on their way home or already back at home. By 20 January 2019 there were 273 political prisoners in Venezuela; by 31 January this figure had risen dramatically to 942. Among them are 58 military personnel and 11 minors.

These victims of the state apparatus are abused during their arrest and then tortured in prison (including sexually). They are denied legal assistance, medical care and often access to food and water. Similar practices were already documented in the 2018 report of the United Nations High Commissioner for Human Rights.

In addition to militias, units of the armed forces and the police are responsible for these human rights violations. The Venezuelan security apparatus can count on support from Cuba, the so-called G2 (*Grupo Dos*), for reconnaissance and counterespionage. Military courts have also been crucial, particularly since 2014 — not only in trials against members of the armed forces, but also against civilians accused of rebellion or treason, as the International Commission of Jurists revealed in a report in 2018.

Meanwhile, the Supreme Court in Venezuela, which is loyal to the regime, has responded to a request by the Attorney General's Office and frozen Guaidó's accounts and forbidden him to leave the country. On 2 April 2019, the Constitutional Assembly followed the request of the Supreme Court and lifted Guidó's parliamentary immunity paving the way for his prosecution.

## Parallel Institutions

The power struggle between Maduro and Guaidó, which was triggered by the latter's self-declared interim presidency, had already been preceded by the doubling of the legislative (2016) and judicial branches (2017).

Venezuelan democracy was in fact laid to rest shortly after the parliamentary elections of December 2015, when freedom of choice was already restricted and the opposition achieved a landslide victory. As a result, the executive and judiciary, which were loyal to the regime, systematically and drastically curtailed the competences and resources of the legislative branch. In 2016, Maduro ensured that a constituent assembly was elected under unfair and un-free conditions. However, the assembly did not draft a constitution, but was busy legislating. Since then, there have been two parliaments that do not recognise each other. That same year, the government refused to hold a referendum on Maduro's dismissal, despite the fact that the opposition had collected the necessary signatures. Many civil servants who had signed were dismissed.

In 2016 the showdown between the government and the NA over the appointment of judges ended with a co-opting of the judiciary by the government. Independent and opposition lawyers were arrested or fled the country. This did not prevent the opposition-dominated NA from appointing 33 judges in July 2017, who now try to hold office in exile, mainly in Chile, Colombia, Panama and the USA. The so-called Supreme Court in Exile or Supreme Court Abroad works virtually: members of the various specialist chambers communicate weekly by conference call via the internet and process complaints received via e-mail and their own website. A Twitter and Instagram account also serve their public relations. The decisions of the Supreme Court Abroad are neither recognised nor adhered to by the Maduro government, such as a ruling on 29 October 2018 that sentenced Maduro to imprisonment and declared him deposed.

To reunite these parallel worlds and overcome the recurring crises, two nego-

tiation attempts between the government and the opposition were launched in 2016 and 2017/18, and were accompanied by internationally respected public figures from other states. However, the negotiations broke off unsuccessfully after a few months.

## Constitutional Acrobatics

Repression, the enforced conformity of the organs of government, and the duplication of institutions prove that the 1999 constitution, drafted under the government of Hugo Chávez, is no longer the basis for government action. Unlike the Latin American military dictatorships of the 1960s to 1980s, Maduro has tried to underpin his policies, repressive measures and manoeuvres with state institutions, by invoking the constitution and elections. This democratic façade is likely to be a typical feature of modern authoritarian regimes. It does not necessarily make them more harmless, but it does render them tolerable for longer, both for the local population and the international community.

Guaidó is also making legalistic efforts to legitimise his self-appointment as interim president. When the NA did not recognise the presidential elections of May 2018 as democratic nor Maduro's assumption of office in January 2019 as legitimate, it passed a legislative act on 15 January declaring the country's presidency vacant and Maduro a usurper. This situation enabled it to apply three constitutional articles. Article 333 entitles citizens (with or without office or mandate) to enforce the Constitution if it has been violated or disregarded. Article 350 grants the people the right to rebel against regimes, laws and authorities that undermine democratic values and principles, and violate human rights.

While these two articles refer to violations of the Constitution and the resulting right to resist, Article 233 regulates the absence of any president. Several cases are described, namely death, resignation, deposition by the Supreme Court, physical

or mental incapacity, dismissal by referendum and neglect of office. As one might expect, they do not include the current constitutional conflict. Since there is no constitutional provision regulating the current situation, the NA refers to an analogous case in which Article 233 could be applied. If the head of state is absent before taking office, under Article 233 presidential elections shall be held within 30 days. During this period, the NA chairman shall take over the affairs of government. Guaidó took on this role with the NA's support via his very public swearing-in ceremony in January 2019. According to the NA's decision, he now has the threefold task of ending the usurpation of the presidency by Maduro, forming a transitional government, and organising free and transparent elections.

On 5 February, the NA adopted the statute governing the democratic transition and the restoration of the Constitution. Among other things, it makes the 30-day deadline of Article 233 of the Constitution more flexible: this now refers to the period beginning with the (unspecified) end of usurpation and ending with the formation of a transitional government. Elections should be held as soon as possible and at the latest within one year.

On 15 January, shortly before the transition statute was adopted, the NA enacted the so-called amnesty law. The opposition thus altered its strategy vis-à-vis prosecuting Chavists and Madurists. The law offers the prospect of impunity to those civilians and military loyal to the regime who are willing to change sides and contribute to the democratic transition. After Guaidó had been sworn in, the text of the law was distributed to police and military services in front of the international media. Guaidó did not even exclude Maduro from the group of potential beneficiaries. The USA supports the opposition's offer, which is as generous as it is vague, while human rights organisations, such as Human Rights Watch, criticise the fact that it does not specify either the crimes to be considered or the implementation process. They argue that due to this ambiguity, the amnesty law contradicts

the constitution and the international obligations of the Venezuelan state. The number of deserters in question has so far been limited to about 700 — in a state with some 2,000 generals alone and numerous military leaders heading ministries, state companies, and regional executive branches. There are also a number of diplomats from Venezuela's embassies who have spoken out in favour of Guaidó.

## Excessive International Zeal

Although in Venezuela lawfulness has long been a mere political veneer, and Article 233 of the Constitution is the weakest pillar of Guaidó's empowerment, many governments around the world have emphatically followed the legalistic argument derived from it. They were ready, either immediately or after an eight-day ultimatum during which free elections were supposed to be announced, to officially recognise Guaidó's interim presidency and demand that presidential elections be held. Furthermore, the USA and other Latin American countries welcomed the ambassadors sent by Guaidó. Guaidó also visited Colombia, Brazil, Paraguay, Argentina and Ecuador in late February and early March 2019.

By extending their political commitment from the legitimacy of Guaidó's interim government to its official recognition, these states effectively gave Venezuelan constitutional law precedence over international law. On the one hand, it is part of the international legal tradition and the recognition procedure of most states not to recognise persons or governments, but rather states. On the other hand, according to international law, recognition is based on the actual exercise of power in a state, meaning effective control over its armed forces, administration and territory. The recognition of a government under international law goes hand in hand with a number of privileges and obligations, whose use and fulfilment presupposes government effectiveness. The premature recognition of a revolutionary government can be seen as

a violation of the ban on intervention and can exacerbate conflicts. This is particularly true of present-day Venezuela, since Guaidó, as the president recognised by several states, could now ask foreign countries for military assistance. Although Guaidó's international backing reinforces his political weight, the diplomatic step of officially recognising his interim presidency further foments the conflict. By their explicit partiality, the recognising states unnecessarily restrict their room for manoeuvre, e.g. for mediation.

## The Politicisation of Humanitarian Aid

The international-law principles of state sovereignty and non-interference are in tension with the humanitarian principle of human protection, which has been enhanced by the concept of *Responsibility to Protect* since 2005. This legitimises, under strict conditions, military measures for the purpose of humanitarian intervention.

The political struggle for humanitarian aid in Venezuela and its connection to regime change is currently caught in this tense relationship. While the president systematically violates human rights, the interim president is not in a position to protect citizens from these practices. While Maduro denies the existence of a humanitarian crisis, rejects support from abroad and closes the borders, Guaidó leads the Aid and Freedom Coalition for Venezuela. This recruits aid workers from among Venezuela's population and non-governmental organisations, and gathers aid supplies from abroad (especially from the USA) in neighbouring regions across the Venezuelan border.

On 23 February, the test of strength between government and opposition surrounding humanitarian aid reached a headline-grabbing peak when Guaidó took the lead in a convoy of lorries carrying relief supplies that started in Cúcuta, Colombia. Further aid transports were organised from Roraima in Brazil. What had begun with an international aid concert and speeches by

Guaidó and the presidents of Chile, Colombia, Paraguay and the Secretary-General of the Organisation of American States (OAS) in Cúcuta ended a few kilometres beyond the border crossing in a clash between the convoy and Venezuelan military and police. According to Foro Penal, about 60 people were injured and at least two killed. Guaidó stopped the “humanitarian avalanche”. Via Twitter, he officially informed the international community that, since Maduro had prevented the import of aid, all options should now be kept open to liberate Venezuela.

Unlike the USA, Latin American and European countries, which are on Guaidó’s side, unequivocally rule out a military option. However, they call on the Maduro government to allow humanitarian aid and to organise new elections or else resign. Given their two-pronged approach, Maduro views foreign humanitarian aid as a Trojan horse intended to change the balance of power, i.e. as an instrument for regime change. Against this backdrop, the United Nations, the International Committee of the Red Cross and the national Red Cross societies associated with it have refused to participate in relief operations organised by Guaidó. Their justification is that the principles of international humanitarian law — impartiality, neutrality and independence (from political objectives, for instance) — are not being observed. More and more non-governmental organisations are raising their voices against the politicisation of humanitarian aid to Venezuela, for which they hold the government and the opposition equally responsible.

## International Sanctions Policy

Yet many Latin American states, the USA and the EU have been steadily increasing the pressure on the Maduro regime since 2017. In August of that year, Argentina, Brazil, Paraguay and Uruguay excluded Venezuela from Mercosur, the common market of the South, by applying the democracy clause. In June 2018, the OAS

passed a resolution that did not recognise the result of the presidential elections and noted a breach of the constitutional order in Venezuela. The process of withdrawal from the OAS, which Venezuela initiated with its application in 2017, has now been interrupted, after many OAS member states recognised Guaidó as the legitimate president and after he sent a special representative to the OAS. The meeting of 14 Latin American countries held in August 2017 in the Peruvian capital gave rise to the Lima Group, which is working to find a peaceful solution to the Venezuela crisis. In the course of its summit meetings, the group has intensified its demands on the Maduro government. In its February 2019 statement in Bogotá, it declared that Maduro’s hold on power was a threat to peace and security in the region, and it called on actors in Venezuela and abroad to officially recognise the Guaidó government. In September 2018, Argentina, Canada, Chile, Colombia, Paraguay and Peru demanded that the International Criminal Court investigate the crimes against humanity they claim have been committed in Venezuela since February 2014.

The USA, the main buyer of Venezuelan oil, has been imposing increasingly harsh sanctions against Venezuela since 2015. These include visa restrictions, the freezing of property and assets, and a ban on U.S. citizens and institutions from conducting transactions with persons listed on the *Special Designated Nationals And Blocked Persons List*. Canada followed the US measures against Venezuela in September 2017, as well as their tightening in May 2018. On 28 January 2019, the US Department of State and the US Department of Finance cancelled the oil deliveries by Venezuela’s largest oil company PDVSA. They also transferred control of its Texas-based subsidiary CITGO, and of Venezuelan government accounts on US territory, to Guaidó’s interim government.

The EU has had an arms embargo in place against Venezuela since November 2017. In addition, the assets of persons considered to be key actors in the repressive



regime have been frozen. These people have also been banned from entering EU countries. These measures were extended and prolonged in March 2018. European countries such as Switzerland and Norway joined the EU sanctions with similar measures.

## The Domino Theory

For years, Latin America regarded the dismantling of democracy and the rule of law, and the aggravation of the humanitarian situation in Venezuela as a purely national matter. Only as a result of several changes of power in the region, the drying up of Venezuelan money that flowed into friendly states, and the exodus of around four million Venezuelans have Latin America's countries become willing to regard the "Venezuela problem" as regional.

In the meantime, however, the Venezuela crisis has become more complex not only at home but also abroad. Some actors inside and outside Latin America suspect that the USA's engagement in Venezuela hides a more comprehensive regime change strategy which, in the longer term, will also encompass Cuba and Nicaragua.

This so-called domino theory is lent credence not only by statements from the US President, his Vice President Mike Pence and his national security advisor John Bolton. In January 2019, the Republican Elliott Abrams, who had already held foreign policy positions under Ronald Reagan and George W. Bush, was appointed US envoy for Venezuela. Abrams is a highly controversial figure in inter-American relations. Serious accusations are associated with his name, such as the concealment of human rights violations and the arming of groups in the Central American conflicts during the 1980s. In addition, Senator Marco Rubio, the son of Cuban emigrants and a proponent of a tough policy towards Havana, acts as an informal foreign policy advisor (and sometimes government spokesman) on Latin American issues. Rubio represents the state of Florida, which has a large Latin American electorate.

Members of the Venezuelan opposition also fuel the domino theory. Julio Borges, member of the NA, confirmed during a press conference in the USA that the current struggle is not only about Venezuela, but also about Cuba and Nicaragua, and freedom in the whole region. He also used the metaphor of a Berlin Wall that had not yet fallen in Latin America, implicitly referring to a new Cold War.

Domino theories and Cold War analogies, however, have a devastating effect on conflict resolution because they broaden the circle of parties in the conflict and promote the hardening of positions and thus confrontation. It is true that other foreign actors besides the USA are also involved in the Venezuela conflict, above all Cuba, China and Russia. However, their role is likely to remain limited due to narrowly defined priorities. Havana is likely to withdraw its security experts from Venezuelan institutions as soon as "21<sup>st</sup> century socialism" is no longer Venezuela's state ideology. China is Venezuela's main creditor, and its key concern is contractual security, meaning the repayment of its loans. Moscow, on the other hand, has a strong interest in keeping US interference in Venezuela to a minimum.

## Dialogue instead of Violence

The international engagement in the Venezuelan conflict should give priority to humanitarian protection, contribute to de-escalation, focus on the Venezuelan actors, and ensure that any dialogue process is embedded in Latin America. Europe would have a role to play in supporting the regional framework.

*Humanitarian protection.* The international community should work towards the Maduro regime refraining from repressive measures, releasing political prisoners, and allowing humanitarian aid by neutral actors. For his part, Guaidó should refrain from politicising it. Simultaneously, his physical integrity and freedom must be strictly protected. The path to holding democratic new elec-

tions would then have to be smoothed in talks between government and opposition — a presidential election is essential, but parliament or regional executives could be elected at the same time. This would mean moving away from political maximum goals in favour of immediate humanitarian protection for the population.

*De-escalation.* International pressure on authoritarian regimes can certainly contribute to their erosion and give the opposition some protection. However, a policy of regime change from outside only leads to sustainable democracies in exceptional cases, even if the call for help came from inside the country. It is therefore imperative to avoid a situation where US engagement on the Venezuela issue supplants the role of Venezuelan society and Latin America, giving the whole process the character of an externally imposed regime change. If the conflict escalates, US support for Guaidó must also be prevented from leading to military intervention. The risk of violent chaos with an impenetrable network of numerous state, para-state, social and criminal actors would be extremely great.

*National focus.* In early 2019, the Venezuela conflict became highly internationalised. A constructive approach to tackling the crisis requires a focus on national actors. Guaidó's fresh and dynamic charisma was decisive in upgrading the NA and convincingly representing it in public as well as remobilising the population. For the initial phase of dialogue with the regime, it is important to keep the circle of participants small. During the transition process, however, other national actors (such as trade unions, associations, churches, the student movement, representatives of a critical Chavism) should also be involved so as to lay eventual foundations for the social anchoring of democracy and reconstruction in good time.

*Latin American embedding.* Latin America is today divided between those governments that stand behind the Maduro regime and those that are pushing for change. In the latter group, there is no agreement on the

question of whether Guaidó should be recognised. Mexico and Uruguay are pursuing a middle course with the proposed "Montevideo mechanism", which is also supported by Caribbean states and Bolivia. This mechanism is a four-phase process to overcome the crisis — comprising dialogue, negotiation, commitments and implementation — whereby new elections are not a prerequisite for talks, but a possible outcome. The emphasis on building trust and an openness to results was one of the strengths of the concept; it did not, however, develop any momentum. Neither the two main countries nor the three personalities who were supposed to promote rapprochement between the conflict parties were able to develop the necessary diplomatic traction.

*EU support for a Latin American group of states.* While the EU is divided on the question of recognising Guaidó's interim presidency, it has nonetheless been able to form an international contact group, which joined in a meeting with other Latin American countries in Uruguay on 7 February. The governments of Bolivia, Costa Rica, Ecuador, France, Germany, Italy, the Netherlands, Portugal, Spain, Sweden and the United Kingdom were represented.

The divergent positions could provide a resource for forming a politically balanced small group of Latin American states, whose involvement is acceptable to both sides and which opens a first channel of communication between the government and opposition. The expectations and conditions to be established in this way should not cover regime change, but the launch of a dialogue process between the conflict parties. Such an initiative would not be the first, but the context would have changed. This time the talks could be more confidential and involve Cuba as a guarantor. The group should present itself to the Maduro government and the armed forces supporting it as a "peaceful alternative" to the menacing option of a US intervention. The negotiations would have to specify concessions to the regime, which would certainly include more than a vague promise



of amnesty. It should be clarified which countries will accept the amnestied actors. The EU should intensively facilitate such a dialogue process, and provide advisory and technical assistance to the Latin American group.

Finally, those actors within the Venezuelan opposition and the international community who reject both military intervention and negotiations should be reminded of a simple principle: anyone who is for change and does not want to fire a weapon must speak out. This is the only real alternative to civil war.

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